



COMMONWEALTH OF KENTUCKY  
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**OAG 17-002**

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*Subject:* Who may remove members of the Board, pursuant to KRS 96.760(2), the Mayor or the City Council.

*Requested by:* Wendell H. Honeycutt

*Written by:* Sam Flynn, Assistant Attorney General

*Syllabus:* The Glasgow City Council, not the Mayor, has the authority to remove members of the Glasgow Electric Plant Board, pursuant to KRS 96.760(2) of the Little TVA Act, KRS 96.550 et. seq.

*Statutes construed:* KRS 83A.130; KRS 96.550; KRS 96.760

*OAGs cited:* OAG 80-63; OAG 82-138

***Opinion of the Attorney General***

Mr. Wendell H. Honeycutt of the Glasgow City Council, in Barren County, Kentucky has requested an opinion of this office as to whether, under KRS 96.760(2), either the Mayor or the City Council of Glasgow may remove members of the Glasgow Electric Plant board.

The Glasgow Electric Plant Board operates under the Little TVA Act, KRS 96.550 et seq., (hereinafter "the Act"). The Glasgow City Council, pursuant to enactment of an ordinance, elected to operate the electric plant under the provisions of KRS 96.740 of the Act. See *Hatchett v. City of Glasgow*, 340 S.W.2d 248, 250 (Ky. Ct. App. 1960). The plant in effect is operated by the City of Glasgow through the plant board. In order for such a board to operate it is necessary for the governing body of the city to elect to come under the Act. KRS 96.560 authorizes a municipality to acquire, own and operate an electric plant and contract

with and acquire from TVA, inter alia, electric power. The city's powers, in this regard, are exercisable through the electric plant board. See KRS 96.570. Although the board has a great degree of autonomy, it really performs for the municipality creating it. See OAG 80-63; *citing*, KRS 96.740; and *Monticello Elec. Plant B. v. Department of Revenue, Ky.*, 392 S.W.2d 440 (1965) 441.

"While holding membership on the Electric Plant Board is not filling a 'municipal office', within the meaning of § 165, Kentucky Constitution [see *Kereiakes v. Graham*, 458 S.W.2d 162 (Ky. 1970)], it is at once apparent that the municipal plant board is but an instrumentality, agency, or sub-unit of the city creating it, notwithstanding its autonomous powers. OAG 80-63. The board is an independent agency pursuant to KRS 96.740, which declares it to be a body politic, a corporate agency with the power to contract, be contracted with, sue and be sued, in and by its corporate name. OAG 82-138. Board members have been held not to be city officers. *Kereiakes v. Graham*, 458 S.W.2d 162 (1970). It is similar in makeup to the utility commission authorized by KRS 96.530, which we have also declared to be independent of the city.

The mayor has the authority to appoint members of the board under the terms of KRS 96.740, which states in part that the ordinance required to be enacted under the statute "shall authorize the mayor or chief executive to appoint a board, subject to the approval of the appointments by the governing body of the municipality..." KRS 96.760(1) provides that appointments made to complete expired terms of office shall be made in the same manner as the original appointments.

KRS 96.760(2) describes how members of a utilities board may be removed from office under the Act. KRS 96.760(2) provides the following:

"Any member of the board may be removed from office upon a vote of a majority of the members of the governing body of the municipality for inefficiency, neglect of duty, misfeasance, nonfeasance, or malfeasance of office."

For purposes of the Act, KRS 96.550(9) defines "governing body" as "the board, council, commission, fiscal court, or other general governing body of the municipality." "Mayor" separately defined as: "the mayor of any class city unless there be a city manager, then it shall mean city manager, or the county judge/executive of any county...[it] also mean[s] the mayor of a consolidated local government." KRS 96.550(14).

As the plant is operated by the municipality, City of Glasgow, through the utilities board, the "governing body" of the City of Glasgow is the "governing body" for the purposes of the KRS 96.760(2). Pursuant to the Glasgow City Code of Ordinances § 30.01-.02 the Glasgow is governed under the "Mayor-Council plan," as codified and described under KRS 83A.010 et seq.

Pursuant to KRS 83A.130(2), under the Mayor-Council plan, the city council of a municipality is the elected legislative body. The Glasgow City Council is the elected legislative body of the City of Glasgow. See KRS 83A.130(11) (stating "[t]he legislative authority of the city shall be vested in and exercised by the elected council of the city..."); see also, Glasgow City Code of Ordinances § 32.03(A)(1)-(2).

The "governing body" not the "mayor" is provided the authority to remove members of the electric plant board under KRS. 96.760(2). Accordingly, the Glasgow City Council is the "governing body" of the municipality, and is vested with the sole authority to remove members of the Glasgow Electric Plant Board under KRS 96.760(2) of the Act.

ANDY BESHEAR  
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read 'Sam Flynn', written over the printed name.

Sam Flynn  
Assistant Attorney General